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3743

Practitioner's Docket No.: 210_534

PATENT

LD
10-3-02
#3

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:

Merle Dana Sears et al.

August 30, 2002

Ser. No.: 10/038,438

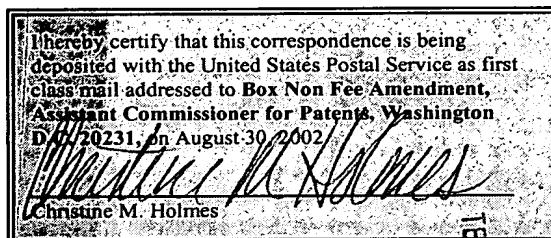
Art Unit: 3743

Filed: January 7, 2002

Examiner: Leo, Leonard R.

For: AIR BAFFLE ATTACHMENT TO A HEAT EXCHANGER

Box Non Fee Amendment
Assistant Commissioner for Patents
Washington, DC 20231



RESPONSE TO OFFICE ACTION

Sir:

This is in response to the Office Action mailed August 15, 2002.

REMARKS

The Applicant has been required to restrict his claims to either Group I (Claims 1-5), or Group II (Claims 6-10). The inventions of those two groups are said to be separate and distinct because the heat exchanger of the Group I claims could be made by a materially different process than that which is set forth in Group II.

Applicant respectfully traverses the requirement for restriction and requests the Examiner's reconsideration of such requirement. The Applicant recognizes the statutory authority for the Examiner's requirement for restriction in 35 U.S.C. 121 and 37 CFR 1.142. Further, in providing guidelines for distinctness between a process of making and the product made, M.P.E.P. 806.05(f) provides that "A process of making and a product made by the process can be shown to be distinct inventions if ...the product as claimed can be made by another and materially different process." While the Examiner has suggested another process by which the product as claimed can be made (i.e., roll bonding two sheets together with expansion of the fluid passage), the Applicants do not believe that such a process is viable. As can be best understood, the Applicants believe that the suggestion is to

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